

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

HITACHI CONSUMER ELECTRONICS \* Civil Docket No.  
\* 2:10-CV-260  
VS. \* Marshall, Texas  
\*  
\* April 12, 2013  
TOP VICTORY ELECTRONICS \* 8:30 A.M.

TRANSCRIPT OF JURY TRIAL  
BEFORE THE HONORABLE JUDGE RODNEY GILSTRAP  
UNITED STATES DISTRICT JUDGE

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(Proceedings recorded by mechanical stenography,  
transcript produced on CAT system.)

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P R O C E E D I N G S

(Jury out.)

COURT SECURITY OFFICER: All rise.

THE COURT: Be seated, please.

Let me ask the Plaintiff to go to the  
podium and read into the record the exhibits they used  
during yesterday's portion of the trial.

1 MS. GAGLIARDI: Good morning, Your Honor.

2 THE COURT: Good morning.

3 MS. GAGLIARDI: Plaintiffs would like to  
4 move PTX 007 into the evidence.

5 THE COURT: Is there objection or  
6 disagreement from the Defendants?

7 MR. WINTER: No, Your Honor.

8 THE COURT: All right. Those will be  
9 considered part of the record, and I'll ask Defendants  
10 to do the same thing.

11 MR. WINTER: Good morning, Your Honor.  
12 Defendants request to move into evidence DX 15, 34, 35,  
13 43, 447, 599, 615, 723, 724, 726, 727, 728, 729, 756,  
14 758, 762, 796, 766, PTX 901, JTX 002, DPHX 017.

15 THE COURT: All right. Is there  
16 objection from the Plaintiff?

17 MS. GAGLIARDI: No, Your Honor.

18 THE COURT: Those will also be considered  
19 part of the record in this case.

20 All right. Is there anything else that  
21 either side has for the Court before we bring in the  
22 jury and start the Plaintiffs' rebuttal case?

23 MR. DACUS: Nothing from the Defendants,  
24 Your Honor.

25 MR. BLACK: No, Your Honor.

1 THE COURT: All right. Then if you'd  
2 bring in the jury, Mr. Shadden.

3 COURT SECURITY OFFICER: All rise for the  
4 jury.

5 (Jury in.)

6 THE COURT: Good morning, Ladies and  
7 Gentlemen. Have a seat, please.

8 All right. Is the Plaintiff ready to go  
9 forward with its rebuttal case?

10 MR. PLIES: Your Honor, Plaintiffs call  
11 Jeff Hamilton.

12 THE COURT: All right. If you'll come  
13 forward, Mr. Hamilton. You remain under oath.

14 And you may proceed when you're ready,  
15 Mr. Plies.

16 JEFFREY HAMILTON, PLAINTIFFS' WITNESS, PREVIOUSLY SWORN

17 DIRECT EXAMINATION

18 BY MR. PLIES:

19 Q. Good morning, Mr. Hamilton.

20 A. Good morning.

21 Q. Were you in the courtroom yesterday for  
22 Mr. Wechselberger's testimony?

23 A. Yes, I was.

24 Q. Have you also reviewed Mr. Wechselberger's  
25 expert reports in this case?

1           A.     Yes, I have.

2           Q.     Would you like to respond to some of the  
3 points that Mr. Wechselberger raised yesterday in Court?

4           A.     I would.

5           Q.     What sorts of issues would you like to  
6 discuss?

7           A.     The -- his assertions on infringement and  
8 validity.

9           Q.     Now, with respect to infringement, I believe  
10 Mr. Wechselberger used a figure similar to this one to,  
11 as I understand it, argue that a signal that's output  
12 after each stage of the signal processing is a different  
13 signal than the signal that goes in to each stage of the  
14 signal processing.

15                   And I wanted to know if you agreed with Mr.  
16 Wechselberger on that point.

17           A.     I do not agree.

18           Q.     And what's your reason for that?

19           A.     These are digital signal processing blocks,  
20 the signal flows through these different processing  
21 steps. So you tune to Dancing with the Stars on the  
22 left, and it comes down the antenna. It's demodulated.  
23 So I went through this in my presentation Tuesday. This  
24 signal is demodulated. Comes out in the form of bits.  
25 Goes out through the error decoder, the trellis decoder

1 in the first block.

2           What comes out is different bit, but it  
3 represents the same signal. It's still the TV channel.  
4 It's still the audio and the video that was transmitted.  
5 And similarly through each other step, the signal flows  
6 from the antenna to the television screen, and it's --  
7 it's the same signal.

8           Q. Now, I thought I also heard Mr. Wechselberger  
9 discuss, that inclusion of certain unclaimed elements in  
10 the accused products, for example, the data  
11 de-interleaver or data de-randomizer, prevented the  
12 accused products from infringing.

13           Do you agree with that contention?

14           A. I do not.

15           Q. And what's your basis for that?

16           A. The -- so the -- his -- his argument was if  
17 there's an intervening element there and you take it  
18 away -- he had two arguments. First, you take the  
19 intervening element away --

20           THE COURT: Mr. Hamilton, please slow  
21 down just a little bit. It would help everyone if we  
22 could hear it a little slower.

23           A. What was the question again?

24           Q. (By Mr. Plies) Yeah. So Mr. Wechselberger was  
25 describing the inclusion of certain components in the

1 accused products, for example, the data de-interleaver  
2 and the data de-randomizer and seeming to argue that the  
3 inclusion of those additional elements somehow prevented  
4 the accused products from infringing the claim.

5 I wanted to know if you agreed with that.

6 A. I do not.

7 Q. And can you provide an explanation for your  
8 reason?

9 A. The -- the presence of other elements does not  
10 affect my infringement analysis. The -- the word  
11 comprising is highlighted behind you on the screen  
12 there.

13 The claim requires the elements stated in the  
14 claim to be present. It doesn't matter if there are  
15 other elements also present.

16 THE COURT: Not to comment on what you  
17 said, but you said it much better.

18 Q. (By Mr. Plies) And, Mr. Hamilton, what's your  
19 understanding of how to perform an infringement analysis  
20 such as you did in your -- your presentation?

21 A. So as I went through on Tuesday, my task  
22 during infringement analysis was to look at the text of  
23 the claim and try to determine if each of the elements  
24 of the claim appear in the product -- in the accused  
25 products.

1           And so here's a diagram showing for the first  
2 element -- it's kind of a lot of words, but we went  
3 through it, and that element is present in the products  
4 in the form of a tuner, and the next element is there in  
5 the form of a demodulator, and then the next element --  
6 well, this particular claim is met by the -- this is the  
7 one that's in common, I think, so it's met by the  
8 trellis decoder.

9           I have an extra arrow there because the other  
10 claims address the Reed-Solomon decoder. But perhaps  
11 you get the idea.

12           And then the -- the -- the green and blue  
13 elements are met by the bit-expanders, audio and video.  
14 And we don't show it here, but the video is DCT.

15           So each of these elements is present in the  
16 product, and that's why I determined that the product  
17 infringes.

18           Q. Now, you may recall that Mr. Wechselberger was  
19 removing certain elements of the accused product in his  
20 presentation and was saying that the accused product  
21 would not work. In his explanation of that, did you  
22 perceive any flaws in his argument?

23           A. Yeah. It just seems kind of backwards. So,  
24 you know, he looks at the block diagram of the things  
25 that you build a TV receiver out of, and when some of



1 the -- there are elements in a TV receiver that are not  
2 represented in the claim, that seems to -- he forms the  
3 opinion that the product doesn't infringe. But, of  
4 course, that's not the way infringing analysis works.

5 Q. So based on anything you heard in Court from  
6 Mr. Wechselberger, has any of that changed your opinion  
7 with respect to whether the accused products infringe  
8 the '310 and '375 patents?

9 A. No, it does not.

10 Q. Turning to validity, did you opine -- can you  
11 please provide your opinion as to what the level of  
12 ordinary skill in the art would have been back at the  
13 time of filing of the patents?

14 A. A bachelor's degree in electrical or computer  
15 engineering and four years of experience with digital  
16 signal processing or digital television or equivalent  
17 education and experience.

18 Q. And did you apply that level of skill from the  
19 perspective of one of ordinary skill in 1990 at the time  
20 the patents were filed?

21 A. I did.

22 MR. PLIES: Mr. Pickett, if you could  
23 pull up DX 599. I'm sorry. 599.

24 Q. (By Mr. Plies) Mr. Hamilton, is DX 599 the  
25 DigiCipher document that Mr. Wechselberger was relying

1 upon for his invalidity analysis?

2 A. Yes, it is.

3 Q. And do all of Mr. Wechselberger's invalidity  
4 arguments rely upon this DigiCipher document?

5 A. Yes. All -- all of his arguments rely on this  
6 document.

7 Q. So do you know if all the Defendants'  
8 invalidity arguments rise or fall with this document?

9 A. It would seem so, yeah.

10 Q. And what is the standard of proof that the  
11 Defendants must meet to invalidate and take away  
12 Hitachi's patents?

13 A. Clear and convincing evidence.

14 Q. And do you know if that standard applies to  
15 proving whether DX 599 was publicly available or  
16 publicly known before July 20, 1990?

17 A. My understanding, that it does.

18 Q. Now, is DX 599 a United States patent?

19 A. No.

20 Q. Are there any names listed on the document?

21 A. No.

22 Q. Are there any recipients listed on the  
23 document?

24 A. No.

25 Q. Do you know if this document was submitted to

1 the FCC?

2 A. I have no personal experience of that. I  
3 understand that this seems to be the document that was  
4 sent.

5 Q. Do you have any personal knowledge that DX 599  
6 became publicly known or available prior to July 20,  
7 1990?

8 A. I do not.

9 Q. Now, what company prepared DX 599?

10 A. General Instrument, VideoCipher Division.  
11 It's the San Diego Division.

12 Q. And I believe you indicated you worked at  
13 General Instrument?

14 A. Yes. I worked in the Cable Division in  
15 Pennsylvania.

16 Q. When did you start at General Instrument?

17 A. June 4th, 1990.

18 Q. And when you joined General Instrument, did  
19 you become aware of any corporate culture concerning the  
20 protection and security of technical documentation?

21 A. Yeah.

22 Q. And what was your understanding of that --  
23 that culture?

24 A. Well, both divisions were involved in the  
25 business of security and secure delivery systems. The

1 Cable Division sort of not such high-level security. We  
2 were protecting cable TV delivery to the home.

3 The VideoCipher Division, the word cipher in  
4 VideoCipher comes from encryption, and they had a  
5 history in making products for the U.S. military for  
6 encrypting and securing communications.

7 They -- they had very well-established  
8 document control and secrecy policies and military  
9 background. They had very much of a need-to-know  
10 philosophy on releasing documents.

11 Q. Did you have any personal experience and  
12 interactions with the VideoCipher Division?

13 A. Yeah. So they invented a digital TV system --  
14 digital TV delivery system, and I wanted to build a  
15 system using the same technology on cable, and our  
16 division had a -- quite a difficult time getting them to  
17 share that -- the specifications with us.

18 Q. Now, based upon your experiences at General  
19 Instrument, do you believe that an interested member of  
20 the public could have contacted General Instrument,  
21 requested technical documentation, such as DX 599, and  
22 GI would have provided it to them?

23 A. No, not at all.

24 Q. Did you know a Chris Heegard?

25 A. Yes, I did.

1 Q. How do you know him?

2 A. I hired him in '91 or '92 to work on our QAM  
3 development or cable-to-cable transmission system.

4 Q. Do you know what a non-disclosure agreement  
5 is?

6 A. I do.

7 Q. What is it?

8 A. NDA. So it's a contract that you sign  
9 promising not to share any information. So when we  
10 hired Chris, he had designed an NDA promising the work  
11 he was doing for us would be kept secret or private from  
12 else.

13 Q. To your knowledge, would that have been the  
14 standard practice at General Instrument?

15 A. Yeah, certainly.

16 MR. PLIES: Go back to the slides,  
17 please.

18 Q. (By Mr. Plies) So based on that, to your  
19 knowledge, have you seen any evidence that would  
20 indicate that DX 599 was publicly available before  
21 July 20, 1990?

22 A. No, I have not.

23 Q. Have you seen evidence suggested to you that  
24 it would not have been?

25 A. Yes. In particular, I have this slide which

1 implies or I -- I read into it that it probably -- that  
2 the information in the June 8th document probably was  
3 not available.

4 Q. Now, what are we seeing on the left-hand of  
5 this slide as PTX 1087?

6 A. On the left side is the -- a publication of  
7 Dr. Woo Paik from General Instrument Corporation  
8 describing the DigiCipher system. This is published in  
9 an IEEE technical journal, and it's -- abrogated, it's  
10 almost word for word the same as the June 8th paper.

11 Q. What is the IEEE?

12 A. Institute of Electrical and Electronic  
13 Engineers.

14 Q. And what is their status within the academia?

15 A. Well, academia -- so they published lots of,  
16 you might say, high-level or very detailed technical  
17 papers. So this is transactions on broadcasting for a  
18 broadcast engineer. There are 400,000 members of IEEE  
19 worldwide on one -- I'm sure there are other members in  
20 the audience here.

21 So this is where people skilled in the art  
22 publish their information -- new information about what  
23 they're working on when they're ready to make it public  
24 so that the readers who want to stay informed in their  
25 field would get information from the actual place.

1 Q. And, again, what is the date of the IEEE paper  
2 on DigiCipher on the left side of the slide?

3 A. December 1990.

4 Q. So would this or would this not be prior art  
5 to the '310 and '375 patents?

6 A. This would not be prior art.

7 Q. And what are we seeing on the right-hand  
8 portion of this slide?

9 A. At the bottom, we have highlighted the  
10 editorial policy. So it says: Do not submit a reworked  
11 version of a paper you have submitted or published  
12 elsewhere.

13 So, you know, the IEEE policy says that you're  
14 not to submit, at least papers that have been published  
15 elsewhere. Here, they're publishing almost identical  
16 information or really very, very close to the June 8th  
17 paper.

18 And so according to this policy, I expect that  
19 this had not been published before. I actually recall  
20 when this was published. It was informative to me.

21 Q. Even though you were at GI, it was informative  
22 to you coming out in the IEEE publication in December;  
23 is that right?

24 A. Yes, it was.

25 Q. Let's talk a little bit about DX 599 itself.

1 There was a lot of discussion about what it teaches. I  
2 wanted to focus on one aspect of that, which is what it  
3 teaches concerning error correction.

4 And could you describe what you have on Slide  
5 7?

6 A. So this is a figure from the DigiCipher -- the  
7 June 8th DigiCipher paper. And it shows an FEC decoder  
8 and a block diagram. And I went through recently and  
9 looked at the paper again for exactly what it describes  
10 about error correction, and -- and these are the only  
11 substantive elements.

12 So it appears in another encoder block diagram  
13 in a list at the end, but these are the only -- this is  
14 the only description of the FEC decoder.

15 So it says: Error correction for all  
16 DigiCipher-transmitted bits is performed in a separate  
17 decoder block and is not integrated with the audio  
18 processing.

19 So I -- I found that a little confusing when I  
20 first read it, and I remember being confused by it. And  
21 the Reed-Solomon coding of rate 130 over 154 equals 12.  
22 So there's a very limited amount of disclosure of the  
23 FEC in the DigiCipher paper.

24 Q. And when you looked at what is disclosed, did  
25 you find any issues or problems with the disclosure?



1           A.     Yes, I did. One of the confusing things was  
2 that they specify Reed-Solomon block size. You might  
3 remember the -- the sort of chunky way that Reed-Solomon  
4 operates. A block of data goes into the encoder, and  
5 then parity bytes are added.

6                     So 130 -- well, samples is what they're  
7 called -- 130 units would go into the encoder, and 24  
8 would be added, 24 parity samples. And so it has a  
9 certain structure to it.

10                    Normally, you would expect that to have been  
11 chosen to fit the data structure. So the black lines  
12 there are the data structure actually cut and pasted  
13 from the paper. So it shows their structure based on  
14 504 bits.

15                    And we engineers do a lot of math, especially  
16 in error correction. They need to match up, and this  
17 simply doesn't match up.

18                    Just to be a little more clear about that, at  
19 the bottom, in the table, one Reed-Solomon block had 130  
20 bits in it. That would take 130 out of 504.

21                    The second block would take the next 130 bits,  
22 the third block, another 130 bits, and the fourth block  
23 doesn't have 130 bits to operate on, so it doesn't --  
24 the frame structure doesn't fit into the Reed-Solomon  
25 block size.

1           And so when I read this back in -- sometime in  
2 1990, I remember thinking, I don't know how they're  
3 doing this. They haven't actually told me how they're  
4 doing the Reed-Solomon coding.

5           Q. Did you find any other issues with the  
6 disclosure concerning error correction?

7           A. Perhaps you can imagine, when I read this, I  
8 was thinking already about using it in cable, so it  
9 mattered to me. When I -- I don't remember when I got  
10 this, but when I did, I analyzed it carefully, because I  
11 was desperate to have information on this system,  
12 because I really wanted to implement it in our system  
13 for cable.

14           So I went through this very carefully, and I  
15 looked at these numbers, and -- and I have -- it's a  
16 similar problem, not exactly the same problem. But the  
17 relationship between -- the total data rate is listed  
18 there 5 -- 15.84 megabits, and the data transmission  
19 rate. So what gets transmitted out of the encoded  
20 stream is 19.43 megabits.

21           And so I kind of have the same problem I had  
22 before. It just doesn't add up. 15.84 divided by 30  
23 over 154 doesn't equal 19.43, as it says in the diagram.  
24 It equals 18.77.

25           I don't know what they were thinking, but I

1 can tell that it's not straightforward. It's not  
2 what -- what you would have expected.

3           So I remember at the time -- and it's still  
4 obvious now -- there's something missing in the  
5 disclosure of the FEC. They don't really say how they  
6 do it. My thought at the time, and still is, that  
7 apparently something is missing.

8           It's going around the FEC decoder,  
9 something -- although the wires are shown going into the  
10 FEC block and coming out, it doesn't mean it's being --  
11 it's acting on all of the data that goes through.

12         Q.    All right. So based upon your reading of  
13 DX 599, do you have an opinion as to whether it  
14 anticipates Claim 7 of the '310 patent?

15         A.    I don't believe it anticipates.

16         Q.    And I see that your first sub-bullet is,  
17 quote, error correction signal added commonly to both  
18 the video signal and the audio signal.

19               Do you have an opinion as to whether  
20 DigiCipher teaches that limitation?

21         A.    I don't believe it teaches that limitation.

22         Q.    And then we see the next sub-bullet is error  
23 corrector, which corrects an error of the digital signal  
24 demodulated by the demodulator based on the error  
25 correction signal.

1           Do you have an opinion as to whether  
2 DigiCipher teaches that limitation?

3           A.    I don't.  I believe it does not.

4           Q.    All right.  And then with respect to Claims 26  
5 and 30, do you have an opinion as to whether DigiCipher  
6 teaches the limitation error correction information  
7 added to the video information and separately added to  
8 the audio information respectively?

9           A.    It does not teach that.

10          Q.    And do you have an opinion as to whether the  
11 DigiCipher reference teaches that the requirement error  
12 corrector configured to correct an error of the digital  
13 information demodulated by the demodulator based on the  
14 error correction information as recited in Claim 26?

15          A.    I believe that limitation is not -- does not  
16 appear in the DigiCipher paper.

17          Q.    And then finally, for Claim 30 of the '375  
18 patent, do you have an opinion as to whether the  
19 DigiCipher paper discloses an error corrector configured  
20 to correct an error of a digital information which is  
21 previously demodulated by the demodulator based on the  
22 error correction information?

23          A.    I do not.

24          Q.    I'm sorry.  Do you -- what --

25          A.    I don't think that the DigiCipher paper

1 teaches that claim limitation.

2 Q. Thank you.

3 Now, did you understand Mr. Wechselberger,  
4 with respect to the '375 patent, to also advance what's  
5 known as an obviousness argument?

6 A. Yes.

7 Q. And was he combining the teachings of multiple  
8 references and making that argument?

9 A. He was.

10 Q. And what were the two references that he was  
11 combining?

12 A. The June 8th DigiCipher paper and the  
13 Shikakura '503, which is a patent.

14 Q. And in your opinion, did he provide a  
15 persuasive argument for why, one of ordinary skill would  
16 have combined the teachings of Shikakura '503 with  
17 DigiCipher?

18 A. I -- I do not believe he presented such an  
19 argument.

20 Q. And do you, having read those documents, have  
21 any view as to whether one of ordinary skill would have  
22 been motivated to combine the teachings of Shikakura  
23 '503 with DigiCipher?

24 A. So when I look at whether one in -- skilled in  
25 the art at the time would have been motivated to combine

1 these two references, I -- I didn't hear any arguments  
2 that swayed my opinion as to why they wouldn't combine  
3 them.

4           And when I look at the two references  
5 together, I see good reasons that you would not have  
6 combined them.

7           Q.   And can you please articulate some of your  
8 reasons?

9           A.   So I've discussed that -- how the numbers  
10 didn't match. Well, the reason I knew that is because I  
11 was trying to make the numbers match, as we engineers  
12 do. We try to put everything together.

13           It's quite a complicated system that was  
14 described in the DigiCipher paper, and there are lots of  
15 pieces that have to fit together very precisely. If you  
16 get something wrong, the system won't work. And so I --  
17 I looked carefully at it to -- to see how the -- how --  
18 how it was -- how the pieces matched so that they would  
19 work.

20           And so when I'm looking at the Shikakura  
21 paper, it discloses error correction that's very  
22 complicated, adds functional elements, adds -- so if you  
23 were to add them to the DigiCipher paper, you would mess  
24 up that carefully balanced set of parameters.

25           The word link budget describes the

1 allocation -- there's a big word -- of how -- so you're  
2 only going to transmit so many bits through that  
3 broadcast pipe. And so they're very carefully  
4 allocated.

5           In particular, they were trying to get HDTV  
6 through that broadcast pipe. That was a very difficult  
7 thing at the time. Everybody else in the industry  
8 thought it was impossible. And so they very carefully  
9 allocated bits.

10           You -- if you -- you can't go upset this and  
11 have the system still work. And so adding the proposals  
12 in the Shikakura patent would throw this out of kilter,  
13 would make the whole system corrupted or not -- not as  
14 they describe it.

15           And so in particular, one of those things is  
16 that there's a very large memory buffer. The IDF HDTV  
17 was -- it would be for television receivers people could  
18 afford to buy. If you put extra cost in -- I'm speeding  
19 up -- people can't afford it. So you need it to be as  
20 low cost as possible.

21           You also want it delivered in a reasonable  
22 amount of time, and so you don't want to put a lot of  
23 features in that are going to delay the provision of  
24 this -- of TVs to people.

25           And -- and so you don't want cost. You don't

1 want complexity. The things that are in the Shikakura  
2 patent add cost and complexity without providing any  
3 benefit, as far as I can see.

4           So it seems to very much teach away from -- I  
5 can see very good reasons that motivate against adding  
6 the FEC system of Shikakura to the DigiCipher patent.  
7 Sorry it was so many words.

8           Q.    Thank you.

9           Let's turn to some other aspects that the jury  
10 might consider in their obviousness or non-obviousness  
11 determination.

12           Did you look at any factors that might weigh  
13 additionally in favor of non-obviousness?

14           A.    Yes, I did.

15           Q.    And I see the first bullet you have at the top  
16 is called: Long-felt but unsolved need.

17           Can you explain what you mean by that in the  
18 context of the '310 and '375 patents?

19           A.    Yeah. I was in the digital television signal  
20 processing world very early. It wasn't a big deal -- it  
21 wasn't a big part of the television industry. TV was  
22 all analog.

23           And I very much was aware, when I was at ITT,  
24 for example, and we had those digital signal processing  
25 chips in the television, that, boy, it would be really



1 great. There would be huge advantages if we could use  
2 digital transmission.

3 And so I very much personally felt the need,  
4 and my company felt the need, but we didn't see a method  
5 to do it.

6 And so this was true of many companies around  
7 the world. A lot of people were working on this, and  
8 Hitachi was certainly working on it.

9 There were Japanese systems for high-quality  
10 television, and they -- they had to sort of cobble  
11 together a hybrid of analog and digital. It wasn't  
12 clear how to do all-digital systems.

13 So there was a very, very well-established  
14 need for this.

15 Q. And was that need solved when the Hitachi  
16 inventions were patented?

17 A. Yes, it was.

18 Q. Now, the second major bullet you have is:  
19 Industry respect through licensing.

20 And what do you mean by that?

21 A. The '310 and '375 patents have been licensed  
22 to companies who are actually building televisions,  
23 Panasonic, Sharp, Amtran, Wistron. And so clearly these  
24 companies feel the patents are important and needed in  
25 order to build the TV.

1 Q. And the third bullet is: Commercial success.  
2 And in your opinion, has the '310 and '375 patents, the  
3 inventions that are claimed in those patents, including  
4 the ones you described in your testimony, enjoyed  
5 commercial success?

6 A. Yeah. Outstanding commercial success, of  
7 course. ATSC is the standard. ATSC incorporates the  
8 patent.

9 The FCC has actually said: If you want to  
10 sell a TV in America, it must be -- it must be able to  
11 receive that signal. And so it must have the elements  
12 in this patent.

13 And -- and actually, that applies to all  
14 televisions sold in the U.S. in 2007.

15 Q. And then the final bullet on your slide is:  
16 Nexus. Can you sort of explain what that means?

17 A. Sometimes there could be a patent and the  
18 product that implements the patent is very successful,  
19 but it may be successful because it's broadly marketed.  
20 The patent that is in the product may not really be very  
21 important. Well, I can't think of an example, but  
22 that's the idea.

23 And so it's important, I think, in the jury's  
24 consideration that the -- the patent is the reason for  
25 the success. The patent substantially contributes to

1 the success of the product.

2 Q. And do you have an opinion as to whether  
3 that's the case for the '310 and '375 patents?

4 A. I do. I think the -- that these patents are  
5 enabling of the features of high-definition -- of the --  
6 the features that we buy when we go to the store and we  
7 want this stuff -- I don't know how you feel, but I feel  
8 that television has dramatically improved. I take pride  
9 in the improvements and those -- and my contribution to  
10 those improvements.

11 And they're a big deal. They're -- they're  
12 the reason -- those improvements are the reason that  
13 people buy the television. And so this nexus seems to  
14 be very much supported by the '310 and '375 patents.

15 Q. And what are -- what are some of those  
16 improvements that you're referring to?

17 A. High-definition programming, multichannel  
18 programming, freedom from snow and interference and  
19 patterns on the screen.

20 Q. And I'm sorry. What did you mean by  
21 multiplexing on your last bullet?

22 A. That the local broadcasters -- three of the  
23 local broadcasters are transmitting three choices. Most  
24 people don't get them. You have to use an antenna TV to  
25 get them, but the advantage is there if you use an

1 antenna.

2 Q. And I see that you also have a bullet that  
3 says that the '310 and '375 patents were front and  
4 center in licensing communications.

5 What do you mean by that?

6 A. They -- I understand that when Hitachi and the  
7 -- the companies listed there that license the patents  
8 in those discussions, these patents were right at the  
9 front. They were, you know, at the top of the list of  
10 what was being discussed to license.

11 Q. So, Mr. Hamilton, do you have a final  
12 conclusion or opinion as to whether you believe that the  
13 '310 and '375 patent, the asserted claims -- do you have  
14 an opinion as to whether or not they're obvious in view  
15 of DigiCipher and Shikakura?

16 A. I do not feel they're obvious.

17 Q. Does this Figure -- or modified version of  
18 Figure 4 from the '310 and '375 patents that has been  
19 discussed in the case several times, do you recall  
20 various testimony and -- and Defendants pointing out  
21 that, you know, a receiver circuit may have been known  
22 in the art, a demodulator circuit might have been known  
23 in the art, expansion circuit might have been known in  
24 the art, does the fact that individual elements alone  
25 may have been known in the art, does that affect your

1 opinion as to whether or not the invention was  
2 anticipated or obvious?

3 A. No, it does not.

4 Q. And why not?

5 A. Well, almost all patents, not all patents, are  
6 built out of existing elements, things -- old stuff.  
7 Patents are about combining old stuff into something  
8 new.

9 So it's the combination of these elements that  
10 is the Hitachi patents. Hitachi isn't claiming in this  
11 patent to have invented the demodulator. It was an  
12 existing element.

13 Q. Thank you.

14 MR. PLIES: Pass the witness.

15 THE COURT: Cross-examination.

16 MR. LANDIS: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. LANDIS:

19 Q. Good morning, Mr. Hamilton.

20 A. Good morning.

21 Q. Good to see you again.

22 I'd like to start off by talking about the  
23 very last comment you made, which is that all of the  
24 components -- if I heard you correctly, all of the  
25 components in the claims were known, true?

1           A.     All of the components -- yeah, I think that's  
2 true, yeah.

3           Q.     And it's the combination that matters. That's  
4 what I heard you say, right?

5           A.     Yeah.

6           Q.     So if all of the components are known, then  
7 the jury must have to look at the other claim language  
8 to figure out whether or not our products infringe,  
9 true?

10          A.     I think of the claim as built of the  
11 components, so...

12          Q.     But we just agreed, sir, right, that the  
13 components were known, correct?

14          A.     Yes.

15          Q.     So it's the other language of how the  
16 components are combined together that matters in this  
17 case.

18          A.     It's -- well, it is a combination that  
19 matters.

20          Q.     And so the jury should look very carefully at  
21 the claim language as to how they're combined together,  
22 correct?

23          A.     Yes.

24                   MR. LANDIS: Can we go to rebuttal  
25 Slide 3, please?

1 Q. (By Mr. Landis) Now, this was a slide that you  
2 put up for the -- for the jury members a little while  
3 ago, correct?

4 A. Yes.

5 Q. Okay.

6 MR. LANDIS: Now, I'd like, if I could,  
7 just to remove those arrows for a minute.

8 Q. (By Mr. Landis) Now, I think we just agreed  
9 that the receiver, demodulator, error corrector, first  
10 expander and second expander, those were all known  
11 elements. That's what we just agreed to, correct?

12 A. Yeah, I think so.

13 Q. Okay. So we can put up that Hitachi did not  
14 invent any of those individual components, correct?

15 A. I don't know that.

16 Q. Well, they didn't invent it in the '310 or the  
17 '375 patent. Would you agree with that?

18 A. Yeah. They're not -- the invention of those  
19 is not claimed in either of these patents.

20 Q. So it's the other language that follows those  
21 various elements. That's what matters to this jury.  
22 That's what they have to look to decide whether or not  
23 our products infringe this claim, correct?

24 A. I don't -- I don't know if your  
25 characterization is really -- I think the jury has many

1 things to consider.

2 Q. Well, one of the things they have to consider  
3 is all that additional language, true?

4 A. Sure.

5 Q. Okay. And in the error corrector element, one  
6 of the things they have to consider is that the error  
7 corrector corrects an error of the digital signal  
8 demodulated by the demodulator. That's one of the  
9 things they have to consider, correct?

10 A. Yes.

11 Q. Okay. Now, I'd like to look on the right-hand  
12 where it says reception.

13 Now, you said that this came from  
14 Mr. Wechselberger, correct?

15 A. I think it did.

16 Q. You see all the things at the bottom of  
17 this -- this slide where it says trellis-coded symbols.

18 Do you see that sir?

19 A. Yes.

20 Q. Right above that first did not invent.

21 A. Yes, I see that.

22 Q. You agree what comes out of the demodulator  
23 are trellis-coded symbols, correct?

24 A. I believe the digital signal at that point is  
25 represented as trellis-coded symbols.



1 Q. It's not really bits at that time, is it?

2 A. I'm not sure what you're asking about. So the  
3 diagram doesn't specify how it's represented. It's my  
4 understanding that I think every product actually  
5 represents those trellis symbols as bits.

6 Q. Okay. Let's just assume you're right for a  
7 second.

8 You agree that what comes out of the trellis  
9 decoder is corrected interleaved data, correct?

10 A. So what -- when the signal comes out of the  
11 trellis decoder, it has errors corrected by the function  
12 of the trellis decoder.

13 Q. And what we're looking at here is what the  
14 signal looks like, the digital signal, true?

15 A. Yes. I'm not sure what -- I don't -- so...

16 Q. The claim -- the claim talks about a digital  
17 signal, correct?

18 A. Yes.

19 Q. So that's what we have to look at, the digital  
20 signal, right?

21 A. We -- yes.

22 Q. And when we talk about a digital signal in  
23 terms of 1s and 0s, we're talking about the number of 1s  
24 and 0s we have, true?

25 A. No.

1 Q. So it doesn't matter how many 1s and 0s I  
2 have?

3 A. It's -- so the claim language isn't about how  
4 many 1s and 0s there are.

5 Q. Well, it's about a digital signal, correct?

6 A. Yes.

7 Q. And a digital signal is made up of 1s and 0s,  
8 true?

9 A. It is, but the information is not encoded in  
10 the number of 1s and 0s.

11 You mean in the number of 1s versus the number  
12 of 0s? In some sense, it's represented that way.

13 Q. If you change the 1s and 0s around, you have a  
14 different signal?

15 A. No. You still have an audio and video signal.

16 Q. Sir, I'm not asking what you believe the  
17 underlying information is. I'm asking about the signal.  
18 If you change the 1s and 0s around, you have a different  
19 signal; isn't that true?

20 A. So I think the hypothetical is, if you went  
21 into this decoder and you flipped some of the bits, you  
22 would lose the signal. And the answer is, yes, you  
23 would.

24 Q. And so if I understand how the trellis decoder  
25 works from your testimony, if I had 36 bits coming in,

1 in the ATSC model, I would get 24 coming out, right?

2 A. Well, so a minute ago you said you didn't  
3 think the trellis-coded symbols were represented as  
4 bits, and I disagreed with you. I think they are  
5 represented as bits.

6 If they are -- so if I'm correct about that,  
7 the number of bits that represent the signal between the  
8 demodulator and the trellis decoder would not be 36.

9 For the -- each 24 bits coming out of the  
10 trellis decoder, it would be many more. The trellis  
11 decoder uses soft-decision logic decoding. It needs to  
12 have a higher resolution digitization, and so they're  
13 actually many -- sorry.

14 Q. It's okay. Let me try my question again.  
15 You would agree with me that the way the trellis decoder  
16 works is, if you're correct and it gets bits to it, it  
17 takes three and makes two, correct?

18 A. No. Interestingly enough, it does not. I can  
19 explain, if you would like.

20 Q. That's all right. We're going to move on from  
21 there.

22 You would agree with me that if I took what I  
23 have on this screen and I took the point coming out of  
24 the demodulator and I went into the Reed-Solomon  
25 decoder, in an ATSC signal, that would not work?

1           A.     So I have to guess what you're representing  
2 here, just like when you used the demonstrative on the  
3 board.

4                     This -- you know, this block diagram there as  
5 you've drawn it with the red line just doesn't make any  
6 sense. So I think what you mean is more like what Mr.  
7 Wechselberger showed. If you take the trellis decoder  
8 and the de-interleaver out of the circuit and pass the  
9 signal, the bits coming out of the demodulator directly  
10 to the Reed-Solomon decoder, if that's what you mean,  
11 which I don't think what's drawn, and then the question  
12 was it wouldn't work, I agree it wouldn't work.

13           Q.     It wouldn't work.

14                     MR. LANDIS: Okay. We can take that  
15 down, Mr. Lodge.

16           Q.     (By Mr. Landis) Let's move on to talk about  
17 your testimony about DigiCipher.

18                     Now, if I heard you correctly, you knew  
19 Mr. Chris Heegard, correct?

20           A.     Yes. Yes.

21           Q.     And if I heard you correctly, you hired him in  
22 1991 or 1992 in Hatboro, Pennsylvania?

23           A.     Hatboro, yeah. Like a hat. They used to make  
24 hats there.

25           Q.     Hatboro, Pennsylvania; is that correct?

1 A. Yes.

2 Q. All right. Now, you were not working at  
3 General Instrument's VideoCipher Division in June of  
4 1990, correct?

5 A. I was not working -- I've never worked at --  
6 well, I've been there on business trips, but I've never  
7 been employed to work at VideoCipher.

8 Q. So you have no information about when Mr.  
9 Heegard started at the VideoCipher Division in June of  
10 1990 that you can share with this jury, correct?

11 A. No specific information. I understand that  
12 he -- so what -- when I hired him, I did that on the  
13 recommendation of the San Diego division, that he was a  
14 good guy, that he'd done work for them.

15 Q. Let me try my question again, just so we can  
16 get an answer for the jury.

17 You have no specific information to share with  
18 this jury about Mr. Heegard's hiring or his activities  
19 in June of 1990 at the VideoCipher Division, true?

20 A. Okay. Yeah.

21 Q. Now, you said that you had seen -- seen no  
22 evidence that the DigiCipher system was publicly  
23 accessible; is that true?

24 A. You're referring to 599?

25 Q. Yes, sir.

1           A.     I have no information that it was publicly --  
2 publicly accessible. That's true.

3           Q.     Now, you've been sitting in this courtroom the  
4 -- the entire time, right?

5           A.     No, I haven't been here for the whole trial.  
6 No.

7           Q.     You were here for Mr. Lery's testimony?

8           A.     No, I wasn't.

9           Q.     You missed Mr. Lery's testimony?

10          A.     I did.

11          Q.     So if you had been here for Mr. Lery's  
12 testimony, you would have heard and had some information  
13 that, in fact, DX 599 was publicly available. You  
14 didn't get to hear that; you weren't in the Court; is  
15 that right?

16          A.     I -- I did not hear him say that. And I --  
17 I'm trying to think. I think somebody read me rather  
18 than I read some of his testimony. So in the -- what  
19 I -- I guess that's hearsay. I'm sorry.

20                     So I don't know what he said.

21          Q.     Just to be clear, sir, you were not at the  
22 VideoCipher Division in San Diego in June of 1990,  
23 correct?

24          A.     Correct.

25          Q.     And you do not dispute that Mr. Lery was at

1 the VideoCipher Division in June of 1990, right?

2 A. I don't know. I don't dispute it.

3 Q. Let's talk a little bit about what you showed  
4 the jury.

5 MR. LANDIS: Can we put up Hamilton  
6 rebuttal Slide 6, please?

7 Q. (By Mr. Landis) Before I ask you a question  
8 about this, I want to ask you one more question.

9 You would agree with me that to make a  
10 television, there are probably hundreds, if not  
11 thousands, of patented technologies needed?

12 A. A lot. I don't know -- I never thought about  
13 how many, but, yeah, a bunch of patents. Yeah,  
14 hundreds. Actually, I've reviewed lots of patents that  
15 apply to digital TV in this case. And so, yes, there  
16 are hundreds.

17 Q. All right. Thank you.

18 Now, this is a slide you put up and it shows  
19 two documents. One is PTX 1087, and the other is  
20 PTX 1104.

21 Do you remember discussing these with  
22 Mr. Plies?

23 A. Yes.

24 MR. LANDIS: Now, if we can pull up  
25 PTX 1087.

1 Q. (By Mr. Landis) This is an IEEE paper that  
2 came from Woo Paik at General Instrument Corporation,  
3 correct?

4 A. Yes.

5 Q. Just so the ladies and gentlemen of the jury  
6 can understand, IEEE, that's a pretty well-respected  
7 organization in your business, true?

8 A. Yes.

9 Q. People aspire to have papers published in the  
10 IEEE, correct?

11 A. Yes.

12 Q. And to get a paper published in the IEEE, you  
13 don't just submit it and the next day it's published,  
14 true?

15 A. True.

16 Q. It actually has to go through a pretty  
17 extensive process, correct?

18 A. I -- I -- I don't know anything about the  
19 process. There is group -- somebody has to select which  
20 papers get published.

21 Q. So you don't know anything about the process?

22 A. No. I have a book chapter published by IEEE,  
23 but I don't believe I have any publications in their --  
24 in any of their transactions.

25 MR. LANDIS: Can we go to PTX 1104,



1 please?

2 And can we go to Page 5, please?

3 Q. (By Mr. Landis) Now, PTX 1104, that's the  
4 other document you brought up when you wanted to say  
5 that it doesn't matter -- you know, you think, based on  
6 this document and what this document teaches, that it's  
7 likely that no one else knew about the DigiCipher  
8 system.

9 Did I get that correct?

10 A. No.

11 Q. Well, what did you -- you relied upon this  
12 document in your testimony, true?

13 A. Yeah.

14 Q. And you relied upon it to say that based upon  
15 this submission process to the IEEE, you believe that  
16 DigiCipher was not publicly known; isn't that true?

17 A. I don't know. It's a funny way to say it. So  
18 I think this indicates to me that -- yeah, it wasn't --  
19 this is an indication that it wasn't known. Not as  
20 though it establishes it as a rock-solid fact or  
21 anything.

22 Q. Now, let's look at some of the things you have  
23 to do to get something published. Let's look at No. 1,  
24 authors should consider the following points: Technical  
25 papers submitted for publication must advance the state

1 of knowledge and must cite relevant prior work.

2 Do you see that?

3 A. Yes.

4 Q. So in order to get a paper published with the  
5 IEEE, the IEEE has to determine that you have advanced  
6 the state of knowledge, fair?

7 A. Yeah, but --

8 Q. All right. Let's look at Point No. 3.  
9 Authors must convince both peer-reviewers and the  
10 editors of the scientific and technical merit of the  
11 paper.

12 Did I read that correctly?

13 A. Yes. Well, I think, yeah.

14 Q. Now, let's tell the members of the jury what  
15 peer-reviewers are. Peer-reviewers are experts in the  
16 field, true?

17 A. Characteristically, yeah.

18 Q. In other words, they would be one of ordinary  
19 skill in the art?

20 A. Or -- yeah. Maybe better; I don't know. So  
21 when they select peers, they try to pick people that are  
22 particularly knowledgeable in the field.

23 Q. And when you submit a paper to the IEEE, the  
24 peer-reviewers are not people within your own  
25 organization, correct?

1           A.    I don't know if there's a limit on that, but  
2 ideally it would be independent.

3           Q.    Independent, other people out in the public,  
4 correct?

5           A.    No.  They're peers in the industry.

6           Q.    They're peers in the industry, true?

7           A.    Yeah.

8           Q.    They'd be people that would be interested in  
9 the technology, correct?

10          A.    You said the public, and the peers aren't  
11 members of the public per se.  They're the individuals  
12 who are experts in the field.

13          Q.    Let me try my question again.

14                The peer-reviewers, they would be people that  
15 would be interested in the technology within the  
16 article, true?

17          A.    That's not a sufficient characteristic.  They  
18 have to be knowledgeable of the field that they're  
19 reviewing papers in.

20          Q.    Fair enough.  So they have to be knowledgeable  
21 in the field, correct?

22          A.    Yeah.

23          Q.    And if they're knowledgeable in the field,  
24 then they're probably interested in the field, correct?

25          A.    I don't know anything about their motivation.

1 Yeah, that's a reasonable assumption.

2 Q. Now, let's go down to the fourth bullet point.

3 MR. LANDIS: And if we could just  
4 highlight the because sentence, please, all the way down  
5 to results.

6 Q. (By Mr. Landis) Now, this bullet says:  
7 Because replication is required for scientific progress,  
8 papers submitted for publication must provide sufficient  
9 information to allow -- to allow readers to perform  
10 similar experiments and calculations and use the  
11 reported results.

12 Did I read that correctly?

13 A. Yes.

14 Q. So the IEEE would have had a belief that they  
15 could use this paper for other people to perform the  
16 same experiments and then eventually use those results,  
17 right? That's what this is saying?

18 A. That these are the publication principles,  
19 yes.

20 Q. And Mr. Paik's paper that was published, your  
21 testimony in your deposition, if I got it right, was  
22 that it was word-for-word identical to the June 8th,  
23 1990 paper.

24 Do you recall saying that?

25 A. Almost word-for-word, yeah.

1 Q. Almost word-for-word identical. And the  
2 experts at the IEEE, they found it worthy of  
3 publication, didn't they?

4 A. They -- they -- yes. They must have, because  
5 they published it.

6 MR. LANDIS: We can take that down.  
7 Thank you.

8 Q. (By Mr. Landis) Now, I'd like to talk to you  
9 for a little bit about the actual DigiCipher reference,  
10 599, okay?

11 A. Yes.

12 MR. LANDIS: Can we pull up Plaintiffs'  
13 Exhibit 2?

14 Can we pull up the Figure 1, please?

15 Q. (By Mr. Landis) Now, last time you were on the  
16 stand, you and I talked about Figure 1 for a little bit.  
17 Do you recall that?

18 A. I do.

19 Q. And we talked in particular about Block 22 and  
20 23 and 24.

21 Do you remember that?

22 A. Yes.

23 Q. And I think we agreed that Block 22 was for  
24 video compression, and Block 23 was for audio  
25 compression.

1 Do you remember that?

2 A. Yeah. You made reference to the text that  
3 described it that way.

4 Q. And Block 24, the parity-addition circuit,  
5 that was where you would add error correction  
6 information, correct?

7 A. Yes.

8 Q. Okay. And I believe your testimony last time,  
9 but I just want to make sure, is trellis coding, not  
10 parity addition, true?

11 A. I agree with that statement.

12 Q. Now, would you also agree with me that absent  
13 the claim language, the words commonly and separately do  
14 not appear in the specification of either the '310 or  
15 the '375 patents?

16 A. I believe that's true, only the claims.

17 Q. So when we look to figure out how something is  
18 added commonly or separately, these figures, like Figure  
19 1, that's where we have to look, right?

20 A. I'm sorry. When -- how did you -- what was  
21 the question again?

22 Q. Sure. Let me try again.

23 When we want to determine how the patent  
24 teaches adding commonly and separately, we're going to  
25 have to look to the figures, because they don't use the

1 words added commonly and separately anywhere in the  
2 patent itself in the actual words, true?

3 A. Okay. So they do refer to the figures and the  
4 words. The words describe the figures. The words do  
5 describe how error correction is added.

6 And so we don't only look to the figures for  
7 understanding how parity or how add -- how information  
8 is added to the signal to allow error correction at the  
9 receiver.

10 Q. But those words don't have the word commonly  
11 or separately anywhere in the actual specification,  
12 correct?

13 A. I agree.

14 MR. LANDIS: Can we pull up DX 599,  
15 please?

16 Can we go to Figure 2-2, please?

17 And can you blow that up a little bit for  
18 me, please?

19 Q. (By Mr. Landis) This is a figure out of the  
20 DigiCipher reference. Do you recognize it, sir?

21 A. Yes, I do.

22 Q. There's a block on the left-hand side that's  
23 labeled digital video encoder.

24 Do you see that?

25 A. Yeah.

1 Q. You would agree with me that that digital  
2 video encoder is a video compression like we just saw?

3 A. Yes, I would.

4 Q. And there's a lookup here labeled digital  
5 audio encoder. Would you agree with that?

6 A. Yes.

7 Q. You would agree with me that that's a digital  
8 audio compressor?

9 A. Not in the way we think of it these days, but  
10 yeah.

11 Q. And on the other side of the multiplex,  
12 there's an FEC encoder, correct?

13 A. Correct.

14 Q. And I believe you told this jury that FEC  
15 stands for forward error correction, true?

16 A. I did, yeah.

17 Q. That FEC encoder, that's going to add error  
18 correction for whatever comes into it, correct?

19 A. I don't know that. I mean, it could -- it  
20 could add error correction. Its job would be to add  
21 error correction to at least something that comes into  
22 it.

23 Q. So its job would be to add error correction  
24 information, true?

25 A. Yes.



1 MR. LANDIS: Can we go to Figure 2-1.

2 Q. (By Mr. Landis) Now, sir, this is 2-1 from the  
3 DigiCipher reference.

4 Do you see that?

5 A. I do.

6 Q. On the right-hand side, it says HDTV receiver.

7 Do you see that?

8 A. In the middle?

9 Q. On the right-hand side of the figure. Let me  
10 see if I can get that...

11 A. HDTV receiver?

12 Q. No. HDTV receiver right at the bottom there,  
13 do you see that?

14 A. Oh, yes, I do, the label under the diagram.

15 Q. Under the diagram, yes.

16 And the first block -- where that label is,  
17 the first block there is VHF/UHF tuner. Do you see  
18 that?

19 A. Yes.

20 Q. And I believe you told the ladies and  
21 gentlemen of the jury that the tuner is part of the  
22 receiver, true?

23 A. The receiver described in the patent claims,  
24 yes.

25 MR. LANDIS: Can we go to Figure 2-3,

1 please?

2 Q. (By Mr. Landis) The -- the first block we  
3 see -- before I get there, sir, we see IF input.

4 Do you see that?

5 A. Yes.

6 Q. That's the signal that comes in from the  
7 tuner, true?

8 A. Yes.

9 Q. The next block we see is 16-QAM demodulator,  
10 correct?

11 A. Yes.

12 Q. So that's a demodulator. You would agree  
13 that's representing a demodulator?

14 A. I would agree.

15 Q. The next thing we see is an FEC decoder. Do  
16 you see that?

17 A. Yes.

18 Q. And you would agree with me that that stands  
19 for forward error correction decoder?

20 A. I would.

21 Q. And its job is to decode and correct and do  
22 the error correction process, true?

23 A. Yes.

24 Q. Over on the right-hand side, we have a digital  
25 video decoder.

1 Do you see that?

2 A. Yes.

3 Q. The digital video decoder, that's to reverse  
4 the compression and to expand the video bits, true?

5 A. Yes, it is.

6 Q. And below that, we have a digital audio  
7 decoder.

8 Do you see that?

9 A. Digital.

10 Q. And that job is to reverse the compression and  
11 expand the audio bits, true?

12 A. Yes.

13 MR. LANDIS: I have no further questions,  
14 Your Honor.

15 THE COURT: Redirect from the Plaintiff?

16 You have about 9 minutes left. You  
17 wouldn't want to leave any of them unused.

18 MR. PLIES: PTX 3, please.

19 Can you zoom on the right column, please?

20 REDIRECT EXAMINATION

21 BY MR. PLIES:

22 Q. Mr. Hamilton, is it correct that the June 8  
23 DigiCipher paper was in the possession of the Patent  
24 Office during examination of the '375 patent and is  
25 listed here on the face of the patent?

1           A.     Here, it is.

2                     MR. PLIES:   Left column, please.

3                     MR. LANDIS:   Your Honor, may we approach?

4                     THE COURT:   All right.

5                     (Bench conference.)

6                     MR. LANDIS:   Your Honor, yesterday, our  
7 expert was precluded from saying anything about this  
8 file history.

9                     THE COURT:   He was prohibited from saying  
10 what the Patent Office thought or -- or what they had in  
11 their possession and was not prohibited.

12                    MR. LANDIS:   Yes, sir.

13                    THE COURT:   Their analysis of what they  
14 considered was what we didn't get to.

15                    MR. LANDIS:   I just want to make sure the  
16 same rule applies.

17                    THE COURT:   Same rule applies.   He's gone  
18 as far as he can go.

19                    MR. LANDIS:   Yes, sir.   Thank you.

20                    (Bench conference concluded.)

21                    THE COURT:   All right.   Continue, please.

22                    MR. PLIES:   The left column, please.

23           Q.     (By Mr. Plies) And this Shikakura '503  
24 reference, is that the document that Mr. Wechselberger  
25 relied upon in his invalidity analysis?

1 A. Yes, it is.

2 Q. And is it correct that the Shikakura '503  
3 patent was in the possession of the Patent Office during  
4 examination of the '375 patent and is listed here on the  
5 face of the patent?

6 A. Yes, it is.

7 Q. And those are the only two references that Mr.  
8 Wechselberger relied upon; is that correct?

9 A. Yes.

10 MR. PLIES: Nothing further.

11 THE COURT: Additional  
12 cross-examination?

13 MR. LANDIS: Briefly, Your Honor.  
14 Can you pull up -- thank you. Mr. Lodge is very fast  
15 this morning.

16 RECROSS-EXAMINATION

17 BY MR. LANDIS:

18 Q. This is Defendants' Exhibit 15 on the screen,  
19 Mr. Hamilton.

20 MR. LANDIS: Now, if we could blow up the  
21 center portion that has this marking on it.

22 Q. (By Mr. Landis) Do you see the DigiCipher  
23 reference in there, sir?

24 A. Yes. I see two DigiCipher references.

25 Q. And -- and you see that there's lines drawn

1 across them, correct?

2 A. Yes.

3 MR. LANDIS: If we could go to the bottom  
4 of the document, please.

5 Q. (By Mr. Landis) Sir, do you see where it says  
6 draw line there?

7 He's going to highlight it for you.

8 MR. LANDIS: Mr. Lodge, right to there  
9 (indicating).

10 Q. (By Mr. Landis) Do you see that, sir?

11 A. Yes, I do.

12 Q. Could you read that to the jury, please?

13 A. Draw line through citation if not in  
14 conformance and not considered.

15 Q. Thank you.

16 MR. LANDIS: No further questions, Your  
17 Honor.

18 THE COURT: Additional direct?

19 MR. PLIES: Nothing further, Your Honor.

20 THE COURT: All right. You may step  
21 down, Mr. Hamilton.

22 Does the Plaintiff have an additional  
23 witness to call on rebuttal?

24 MR. BLACK: We have no further time and  
25 no further witnesses, Your Honor. Plaintiff rests its

1 rebuttal case.

2 THE COURT: All right. Does Plaintiff  
3 rest and close, subject to final argument?

4 MR. BLACK: Yes, Your Honor.

5 THE COURT: Does Defendant rest and  
6 close, subject to final argument?

7 MR. DACUS: We do, Your Honor.

8 THE COURT: All right. Ladies and  
9 Gentlemen of the Jury, there are some matters  
10 preparatory to the Court giving you its charge and the  
11 parties offering their final arguments that I need to  
12 take up with the attorneys and work with them on.  
13 Looking at the clock, what I'd like to do  
14 is give you about a two-and-a-half-hour break, and have  
15 you back here at noon. And toward the end of that  
16 break, I'd like you to have an early lunch so you don't  
17 come back hungry.

18 And my hope and plan is that when you  
19 come back at noon, we can bring you in, let me give you  
20 the Court's charge, proceed to have each side argue  
21 their closing arguments, and then turn the case over to  
22 your capable hands to retire, deliberate, and reach a  
23 verdict.

24 That's the plan. And I assume no one's  
25 going to complain about having a two-and-a-half-hour

1 break in the middle of the morning. Certainly, you're  
2 welcome to leave the courthouse, but keep that time in  
3 mind. Don't go far enough to where you can't get back  
4 and be ready to go by noon.

5 And this goes without saying, but we're  
6 getting close. So you won't have to hear me say it many  
7 more times. Don't discuss the case with each other or  
8 anyone else.

9 So with that, we'll stand in recess, and  
10 I'll excuse you until noon.

11 COURT SECURITY OFFICER: All rise.

12 (Jury out.)

13 THE COURT: All right. Counsel, I'd like  
14 you to take about a 10-minute recess, as will I. And  
15 about a quarter until 10:00, if I can have lead and  
16 local counsel, and any additional counsel who has  
17 specific experience working on the joint submitted  
18 charge, to meet me in chambers for the informal charge  
19 conference.

20 With that, we stand in recess.

21 COURT SECURITY OFFICER: All rise.

22 (Recess.)

23 \*\*\*\*\*

24

25



CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/s/\_\_\_\_\_  
SHELLY HOLMES, CSR  
Official Court Reporter  
State of Texas No.: 7804  
Expiration Date 12/31/14

\_\_\_\_\_  
Date

/s/\_\_\_\_\_  
SUSAN SIMMONS, CSR  
Official Court Reporter  
State of Texas No.: 267  
Expiration Date 12/31/14

\_\_\_\_\_  
Date